

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

ENOM, INC., a Nevada corporation,

Plaintiff,

vs.

DANIEL J. PHILBRICK, an individual; and
DOVER SPORTS, INC., d/b/a PHILBRICK'S
SPORTS, a New Hampshire corporation,

Defendants.

Case No.:

COMPLAINT FOR DECLARATORY
JUDGMENT

Plaintiff ENOM, INC., for its Complaint for Declaratory Judgment against Defendants
DANIEL J. PHILBRICK and DOVER SPORTS, INC., d/b/a PHILBRICK'S SPORTS
(collectively "Defendants"), alleges as follows:

PARTIES

1. Plaintiff ENOM, INC. ("eNom") is a corporation organized and existing under
the laws of the State of Nevada, and having its principal place of business at 15801 NE 24th
Street, Bellevue, Washington 98008.

2. Defendant DANIEL J. PHILBRICK ("Philbrick") is an individual residing at
185 Three Rivers Farm Road, Dover, New Hampshire 03820.

COMPLAINT FOR DECLARATORY
JUDGMENT - 1

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1 3. Defendant DOVER SPORTS, INC. ("Dover Sports") is a New Hampshire
2 corporation with a principal place of business located at 161 Portland Avenue, Dover, NH
3 03820.

4 **JURISDICTION AND VENUE**

5 4. This claim arises under the Declaratory Judgment Act, 28 U.S.C. §§2201 and
6 2202, and the United States Lanham Act, 15 U.S.C. §1051 *et seq.* More particularly, this
7 action is brought for the purpose of determining a question of actual controversy concerning
8 allegations of cybersquatting, cyberpiracy of personal names, false designation of origin, false
9 advertising, state and common law trademark infringement and unfair competition, unjust
10 enrichment and invasion of privacy made by Defendants against eNom.

11 5. Upon information and belief, the amount in controversy in this matter is in
12 excess of \$75,000.00

13 6. This Court has subject matter jurisdiction over this controversy by virtue of 28
14 U.S.C. §§1331, 1332 and 1338.

15 7. This Court, on information and belief, has personal jurisdiction over
16 Defendants by virtue of their doing business within the State of Washington and their contacts
17 with the State of Washington commensurate with the United States and Washington
18 Constitutions, so as to submit themselves to the jurisdiction and process of this Court.

19 8. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and 1391(c).

20 **RELEVANT FACTUAL BASIS FOR THE PRESENT ACTION**

21 9. eNom is a leading online provider of domain name registration and other
22 online services to small and home-based businesses, individuals, traffic aggregators and
23
24
25

1 resellers. eNom is the second largest domain name registrar worldwide, and the number one
2 registrar for resellers, with the largest, most active distribution network in the domain
3 industry. eNom is accredited by the Internet Corporation for Assigned Names and Numbers
4 (ICANN).

5
6 10. As an ICANN-accredited domain name registrar, eNom is required to enter
7 into a Registration Agreement with each registrant that registers or seeks to register a domain
8 name with eNom (Ex. 1), which incorporates ICANN's Uniform Domain Name Dispute
9 Resolution Policy (UDRP). Under the UDRP, a registrar such as eNom must maintain the
10 status quo with respect to any domain name that is the subject of an ownership dispute, by not
11 transferring or deleting any such domain name as long as such a dispute remains pending.

12
13 11. Dover Sports operates a retail sporting goods store in Dover, New Hampshire
14 under the trade name "Philbrick's Sports Center", and does business over the Internet in
15 association with a website accessible through the URL www.philbricks.com. Philbrick is the
16 President of Dover Sports.

17
18 12. On July 17, 2007, Defendants filed a complaint against eNom in the United
19 States District Court for the District of New Hampshire, alleging that eNom engaged in
20 unlawful conduct in association with eNom's alleged registration, use and/or trafficking in
21 two Internet domain names, <philbricksports.com> and <philbricksports.net> (the "Disputed
22 Domains"). Specifically, Defendants asserted claims against eNom for (i) cybersquatting
23 under the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d), (ii) cyberpiracy
24 of personal names under 15 U.S.C. §1129, (iii) false designation of origin under the Lanham
25 Act, 15 U.S.C. §1125(a), (iv) false advertising under the Lanham Act, 15 U.S.C. §1125(a), (v)

1 violation of the New Hampshire Consumer Protection Act, N.H. RSA 358-A, (vi) common
 2 law trademark and trade name infringement and unfair competition, (vii) common law unfair
 3 competition, (viii) unjust enrichment, and (ix) invasion of privacy – false light. That case was
 4 assigned Civil Action No. 1:07-cv-00215, and is currently pending before the District Court
 5 for the District of New Hampshire (hereinafter referred to as the “New Hampshire
 6 Litigation”).

7
 8 13. On September 18, 2007, eNom filed its Answer in the New Hampshire
 9 Litigation, and denied that it had engaged in any of the unlawful conduct alleged by
 10 Defendants with respect to the Disputed Domains.

11 14. On or about October 11, 2007, eNom registered the following domain names
 12 on behalf of Defendants without charge, and with Defendants’ express authorization:
 13 <phillbricksports.net>, <myphilbricsports.com>, <philbricsports.com>, <philbriksports.com>,
 14 <myphilbriksports.com>, <thephilbriksports.com>, <freephillbricksports.com>,
 15 <myphilbricksports.com>, <newphilbricksports.com>, <officialphillbricksports.com>,
 16 <philbricksport.com>, <philbricksports.org>, <philbricksportscentral.com>,
 17 <thephilbricksports.com>, <webphilbricksports.com>, <yourphilbricksports.com>,
 18 <justphilbricksport.com>, <officialphilbricksport.com>, <philbricksportsite.com>,
 19 <philbrickssport.com>, <yourphilbricksport.com>, <philsbricksports.com>,
 20 <philbricksportsonline.com>, <phsilbricksports.com>, <phiilbricksports.com>,
 21 <phiilbricksports.net>, <myphiilbricksports.com>, <thephiiilbricksports.com>,
 22 <philbricksportes.com>, <myphilbricksportes.com>, <thephilbricksportes.com>,
 23 <bestphilbricksportes.com>, <yourphilbricksportes.com>, <philbricksportessite.com>,
 24
 25

1 <philsbricksport.com>, <philsbricksports.com>, <myphilbricksports.com>,
2 <thephilbricksports.com>, <philbricksportsonline.com>, and <philbrickesports.com>
3 (hereinafter referred to as the "Philbrick Domains").

4 15. By expressly authorizing eNom to register the Philbrick Domains on their
5 behalf, Defendants expressly entered into, adopted and/or acquiesced to eNom's Registration
6 Agreement (Ex. 1), which governs eNom's registration of domain names to or on behalf of
7 third party registrants.
8

9 16. Immediately upon registering the Philbrick Domains on Defendants' behalf,
10 those domain names were placed into a special registrant account created by eNom for
11 Defendants (the "Philbrick Account"). The WHOIS record for each of the Philbrick Domains
12 identifies the Registrant as "Philbrick's Sports" (Ex. 2).
13

14 17. On or about March 5, 2008, eNom registered another domain name on behalf
15 of Defendants, <philbrickssports.net>. Shortly after registering the <philbrickssports.net>
16 domain name on Defendants' behalf, eNom likewise transferred that domain name to the
17 Philbrick Account. The WHOIS record for <philbrickssports.net> likewise identifies the
18 Registrant as "Philbrick's Sports" (Ex. 3).
19

20 18. By authorizing eNom to register the <philbrickssports.net> domain name on
21 their behalf and/or consenting to the transfer of that domain name to the Philbrick Account,
22 Defendants once again expressly entered into, adopted and/or acquiesced to eNom's
23 Registration Agreement.

24 19. On or about July 23, 2008, Defendants served eNom with their responses to
25 interrogatories propounded by eNom in the New Hampshire Litigation. In those responses,

1 Defendants alleged that eNom engaged in unlawful conduct after the filing of the New
2 Hampshire Litigation by allegedly registering, using and/or trafficking in the
3 <philbrickssports.net> domain name.

4 20. Within the last seven days, counsel for Defendants has advised counsel for
5 eNom that Defendants intend to seek leave to amend their complaint in the New Hampshire
6 Litigation to assert additional claims against eNom relating to eNom's alleged registration,
7 use and/or trafficking in the <philbrickssports.net> domain name.

8 21. Defendants' allegations of unlawful conduct by eNom relating to the
9 <philbrickssports.net> domain name, coupled with Defendants' counsel's statements that
10 Defendants intend to assert additional claims against eNom relating to the
11 <philbrickssports.net> domain name, have created an objectively reasonable apprehension on
12 the part of eNom that Defendants will initiate suit against them, alleging, *inter alia*,
13 cybersquatting, trademark infringement and unfair competition, among other related claims,
14 with respect to the <philbrickssports.net> domain name.

15 22. eNom's alleged registering, using and/or trafficking in the
16 <philbrickssports.net> domain name does not constitute (i) a violation of the
17 Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d), (ii) cyberpiracy of
18 personal names under 15 U.S.C. §1129, (iii) false designation of origin under the Lanham
19 Act, 15 U.S.C. §1125(a), (iv) false advertising under the Lanham Act, 15 U.S.C. §1125(a), (v)
20 violation of the New Hampshire Consumer Protection Act, N.H. RSA 358-A, (vi) common
21 law trademark and trade name infringement and unfair competition, (vii) common law unfair
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1 competition, (viii) unjust enrichment, (ix) invasion of privacy – false light, or violate any
2 other federal, state or common law.

3 23. Moreover, any claims which Defendants may have against eNom relating to
4 eNom's alleged registering, using and/or trafficking in the <philbrickssports.net> domain
5 name are barred by the equitable doctrines of laches, estoppel, waiver and/or acquiescence, as
6 a result of Defendants having authorized eNom to register the <philbrickssports.net> domain
7 name on their behalf and/or consented to the transfer of that domain name to the Philbrick
8 Account.
9

10 24. The registrations for each of the Philbrick Domains are presently scheduled to
11 expire on or about October 11, 2008. Defendants have expressly requested in writing that
12 eNom continue to maintain the status quo with respect to the registrations for the Philbrick
13 Domains, until the New Hampshire Litigation is resolved, by not transferring or deleting the
14 Philbrick Domains, even though the Philbrick Domains are not mentioned in Defendants'
15 complaint in the New Hampshire Litigation.
16

17 25. In the event that the New Hampshire Litigation is not resolved by October 11,
18 2008, maintaining the status quo with respect to the Philbrick Domains will require eNom to
19 renew the Philbrick Domains for an additional year, at eNom's sole expense.
20

21 26. Because the Philbrick Domains are not the subject of any dispute as to their
22 rightful ownership, eNom is not legally obligated, under the UDRP, its Registration
23 Agreement, or otherwise, to renew the Philbrick Domains.
24
25

PRAYER FOR RELIEF

WHEREFORE, eNom prays that this Court enter judgment and grant relief as follows:

A. Declaring that eNom's alleged registering, using and/or trafficking in the <philbrickssports.net> domain name does not comprise unlawful cybersquatting under 15 U.S.C. §1125(d);

B. Declaring that eNom's alleged registering, using and/or trafficking in the <philbrickssports.net> domain name does not comprise cyberpiracy of personal names under 15 U.S.C. §1129;

C. Declaring that eNom's alleged registering, using and/or trafficking in the <philbrickssports.net> domain name does not comprise a false designation of origin under 15 U.S.C. §1125(a);

D. Declaring that eNom's alleged registering, using and/or trafficking in the <philbrickssports.net> domain name does not comprise unfair competition or false advertising under 15 U.S.C. §1125(a);

E. Declaring that eNom's alleged registering, using and/or trafficking in the <philbrickssports.net> domain name does not comprise a violation of the New Hampshire Consumer Protection Act, N.H. RSA 358-A;

F. Declaring that eNom's alleged registering, using and/or trafficking in the <philbrickssports.net> domain name does not comprise trademark and tradename infringement under the common law;

1 G. Declaring that eNom's alleged registering, using and/or trafficking in the
2 <philbrickssports.net> domain name does not comprise unfair competition under the common
3 law;

4 H. Declaring that eNom was not unjustly enriched as a result of its alleged
5 registering, using and/or trafficking in the <philbrickssports.net> domain name;

6 I. Declaring that eNom's alleged registering, using and/or trafficking in the
7 <philbrickssports.net> domain name does not comprise a tortious invasion of privacy or cast
8 Philbrick in a false light;

9 J. Declaring that Defendants are barred from asserting any claims against eNom
10 relating to eNom's alleged registering, using and/or trafficking in the <philbrickssports.net>
11 domain name, under the equitable doctrines of laches, estoppel, waiver and/or acquiescence.
12

13 K. Declaring that eNom has no legal obligation to renew the Philbrick Domains;

14 L. Declaring this case to be an exceptional one within the meaning of 15 U.S.C.
15 §1117(a) and awarding eNom its reasonable attorney fees; and
16

17 M. Awarding eNom such other, further relief as this Court may deem to be just
18 and proper.

19 **JURY DEMAND**

20 eNom respectfully demands a trial by jury in the above-captioned matter for all claims
21 which are triable to a jury.
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Respectfully submitted this 27th day of August, 2008.

MERCHANT & GOULD P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2008, I caused the foregoing Complaint for Declaratory Judgment to be filed with the Clerk of the Court using the CM/ECF system.

/s/ Kaustuv M. Das